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Faculty of Political Sciences of Maria Curie-Skłodowska University, Lublin, Poland

HERBERT GNAŚ

*The Kyoto Protocol and the JUSCANNZ/Umbrella Group
Countries – Party and Political System-Conditioned Determinants*

ABSTRACT

Global Warming and the Kyoto Protocol are issues that raise many controversies. This matter is especially visible in the countries which formed the JUSCANNZ, later renamed the Umbrella Group, which is an alliance in the climate negotiations process that consists of non-European Union developed states that – above all – oppose new greenhouse gases emissions reductions commitments under the Kyoto Protocol. The Kyoto Protocol itself and the aforementioned commitments were and still are the sources of conflicts on the international and country levels. On the country level these conflicts are highly noticeable in four Umbrella Group countries: United States, Australia, New Zealand and Canada and they occurred on various levels in regard to the Kyoto Protocol: negotiation (case of the United States), ratification (cases of the United States and Australia), implementation (cases of the Australia and New Zealand) and a level that can be called a “withdrawal” level (case of Canada). All these conflicts were caused by differences in main political parties’ positions towards the Kyoto Protocol and/or by differences in the look on that matter presented by the legislative branch and the executive branch. In this article the abovementioned issues will be examined.

Key words: Kyoto Protocol, JUSCANNZ, Umbrella Group, party system, political system, Byrd-Hagel Resolution, New Zealand Emissions Trading Scheme, Carbon Pollution Reduction Scheme

INTRODUCTION

The global warming has been for years – and still is – an issue that raises lots of controversies, especially due to its nature. Whether it is anthropogenic or natural,

in 1990 the international community has decided to begin the process of climate negotiations, which led to adoption of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and the Kyoto Protocol five years later. Like the global warming, the Kyoto Protocol itself also raises controversies on international and country levels. The reason is that the Kyoto Protocol imposes greenhouse gases limitations and reductions to the so-called Annex B Parties, those are developed states and countries with economies in transition. On the international level the issues related to the Kyoto Protocol mostly cause the discussions and conflicts between the group of countries, like the European Union, the Group of 77 and China, consisting of developing countries, the Alliance of Small Island States, which is a part of the previous group and the Umbrella Group, formerly known as JUSCANZ or JUSSCANNZ.

JUSCANNZ/Umbrella Group is a loose coalition of countries that emerged during the climate negotiations. At the very beginning it consisted of Japan, the United States, Canada, Australia, Norway, and New Zealand, so the acronym was created from the first letters of the names of each country. Temporarily, Switzerland was also a member of the group, but is not anymore. These highly industrialized countries worked and are still working together to protect their economies in regard to the still ongoing forming and improvement of the climate change regime, especially in relation to greenhouse gases emissions reductions commitments.

Currently, this “alliance” is called an Umbrella Group, which consists of the above-mentioned countries and two more: Russia and Ukraine. The name comes from the negotiating position presented by these countries that was supposed to protect them – put under an umbrella – from European Union’s proposition that was presented during the negotiation of the Kyoto Protocol. It assumed the joint reduction of greenhouse gases emissions by the European Union as a whole, instead of fulfilling individual commitments by all member states. This proposition is known as the EU Bubble.

In some cases the emissions reductions can be expensive to the country and cause problems to its economy, especially to energy and production sectors. This leads to another level of discussions conducted on the Kyoto Protocol and it is a country level. As the climate negotiations became an important issue in the foreign policy, parties in democratic countries created their attitudes towards it as they did it towards the Kyoto Protocol. In some cases these attitudes presented by the most important parties in a country’s party system were/are completely opposing. It could and it led to a conflict on various levels in regard to the Kyoto Protocol: negotiation, ratification, implementation and a level that can be called a “withdrawal” level, because it already happened once. In some cases the conflict also emerged between the executive and legislative branch and its source can partially be in the construction of the country’s political system. In the following paper most significant examples will be presented, these are: the United States of America (negotiations level), the United States and Australia (ratification level), Australia and New Zealand (implementation level) and Canada (“withdrawal” level). This article can give a partial answer to the question whether the leftist or the rightist parties are more likely to support/oppose the Kyoto Protocol?

THE NEGOTIATION LEVEL

The United States' case is probably the best example of how the conflict between the main two parties can inflict the ongoing climate negotiations process. At the time when the text of the Kyoto Protocol was negotiated, Bill Clinton from the Democratic Party won the presidential election in 1992 [*It All...*] and Albert Gore became his Vice President. Al Gore strongly supported taking nationwide and worldwide efforts to deal with the global warming problem, his attitude was especially noticeable in his book written in 1992¹. But in these years the Clinton Administration also had to deal with the congressional elections. At the beginning of his first term Bill Clinton could rely on the full support of the Congress, but in 1994 the Democratic Party lost the majority in both chambers [Oberthür, Ott 1999: 20]. This led to a very uncomfortable situation for Clinton and Gore in relation to Kyoto Protocol negotiations, because the Republican Party strongly opposed adoption of the document. It also strengthened the position of industrial lobbying groups in the United States.

It is important to explain the determinants that could be taken into account by the executive and the legislative in the US during the Kyoto Protocol negotiations. The President and his administration had to pay attention to the international point of view presented by other countries while the legislative was focused rather on the internal issues. It's got to be remembered that all international agreements negotiated and signed by the President of the United States have to be ratified by Senate, therefore the Kyoto Protocol also had to be ratified this way, while the representatives from not only the Republican but also Democratic Party were under pressure from the industrial and business groups [Grubb, Vrolijk, Brack 1999: 32].

During the climate negotiations in 1996 the Clinton administration made an important shift in the United States' position in regard to country's commitments. That shift was an agreement for USA to take responsibility for the global climate by accepting binding emissions targets. The administration declared that "non-binding efforts would not be enough to achieve the goals of stabilizing emissions at 1990 levels by the year 2000" [Pirages, Cousins 2005: 172], these goals have been agreed during the United Nations Framework Convention on Climate Change (UNFCCC) negotiations. In Dennis Pirages and Ken Cousins's opinion [Pirages, Cousins 2005: 173] Bill Clinton simply didn't want to get the United States diplomatically isolated or being considered as a country which rejects the conclusions coming from the IPCC *Second Assessment Report*. Tim Wirth, who headed the US delegation in climate negotiations in 1996 stated that "future negotiations should focus on an agreement that sets realistic, verifiable, and binding medium-term emission targets" [Pirages, Cousins 2005: 172].

¹ The book entitled *Earth in the Balance: Ecology and the Human Spirit*, Houghton Mifflin Harcourt Publishing Company, New York 1992 had three parts. In the first one Al Gore identified global warming as one of two "strategic" threats, the latter was the ozone depletion.

The abovementioned declaration must have made the Republicans furious and that's not just because of possible costs for US economy. The more important reason was that Bill Clinton privately assured the Republican Party that he would not agree to any binding commitments. The Republicans have clear ties with industrial sector, so Clinton's declaration raised anxiety among them about possible rise of energy taxes and strengthening fuel-efficiency standards for cars.

Probably these events and the rising scepticism to climate protection-related issues in the United States led to adoption in 1997 of the so-called Byrd-Hagel Resolution², which put Bill Clinton and Al Gore under strong pressure from the Senate [Schröder 2001: 37]. The name of the Resolution was taken from the names of two Senators: Robert Byrd representing Democratic Party and Chuck Hagel from the Republican Party. It is important to mention that the Resolution was adopted unanimously 95 – 0.

In the Resolution some statements of internal and external nature were presented. Among the second ones it was stated that emissions reductions in the United States could cause major jobs loss and energy prices rise, as well as weakening the trade balance with other countries, so before ratification of a protocol to the Framework Convention on Climate Change and before taking necessary legislation initiatives a strong argumentation should be presented. The main external issue was the matter of binding commitments for developing countries. It was declared that the global warming is a global problem that needs a global action from both developed and developing countries, so it was important to include developing countries in further actions in order to control the global warming. As another reason it was stated that before 2015 the developing countries' emissions would exceed the ones from the United States and other OECD member countries [Victor 2004: 117–119]. Although the Resolution was not binding [Lutter 2013: 80–81] and “highly questionable in terms of international environmental law” [Pirages, Cousins 2005: 173], it gave the President a clear view on the position of the Senate.

In Heike Schröder's [2001: 37–38] opinion the conditions included in the Byrd-Hagel Resolution was a presentation of the will to block the progress of the negotiations, because they were unacceptable for other parties, especially for the Group of 77 and China. It's because during negotiations round in 1995 in Berlin the international community decided that there would be no binding commitments for developing countries. Accepting of these commitments would force developing countries to acquire environmentally-sound technologies from developed states, including the US. For the latter that could make an opportunity to enter the developing countries' markets [Schröder 2001: 38]. The Resolution itself forced Bill Clinton to change the negotiating position of the United States, which could not succeed.

² Full text of the Resolution – see N. Goldstein 2009. *Global Warming*, Infobase Publishing, New York, 149–150.

THE RATIFICATION LEVEL

Bill Clinton's problems in regard to the Kyoto Protocol continued in the possible – or rather purely theoretic – context of ratification. It is possible that Bill Clinton and Al Gore were aware that they were negotiating a text that had no chance to be ratified in USA. The proof for that was the fact that although Kyoto Protocol was signed by Al Gore in 1998, Bill Clinton never forwarded it to the Senate. He made that decision because at the time of signing the document at one of the climate summits the accompanying Senate delegation strongly stated that the President could not expect any support from the chamber [Witthaus 2012: 40–41].

The next President, George W. Bush, had entirely different attitude towards the Kyoto Protocol. After taking the Presidential Office, George W. Bush announced that a cabinet-level review of climate policy was to be carried out [Fletcher 2007: 112]. In 2001 Bush decisively declared that the United States would not ratify and support the Kyoto Protocol [Schreurs 2005: 153]. He stated: “As President of the United States, charged with safeguarding the welfare of the American people and American workers, I will not commit our nation to an unsound international treaty that will throw millions of our citizens out of work. Yet, we recognize our international responsibilities. So in addition to acting here at home, the United States will actively help developing nations grow along a more efficient, more environmentally responsible path” [Bukovansky et al. 2012: 142].

In March 2001 George W. Bush expressed his support to the Byrd-Hagel Resolution. He did it in a letter in which he called the Kyoto Protocol “ineffective” and also wrote that it was unfair that exemptions existed for countries like India [Davidson 2008: 123]. However, he soon began to claim that emissions reductions should be achieved without sacrificing the economic growth for both developed and developing countries. In his opinion “it would be unfair – indeed, counterproductive – to condemn developing nations to slow growth or no growth by insisting that they take in impractical and unrealistic greenhouse gas targets” [Bukovansky et al. 2012: 142].

There were credible signals that Bush's refusal to ratify the Kyoto Protocol was partially caused by the lobbying from the industrial companies. Like it is rightly presented in a book prepared by the team of authors led by Brian C. Black [Black et al. 2013: 259], “large corporations such as ExxonMobil placed pressure on policy makers to ensure that the Kyoto Protocol would not get ratified, as it would cause huge changes in the way that they conduct business”. In June 2001 George W. Bush appeased that lobby by making a policy statement, which was a result from the ongoing cabinet-level review. In the statement the United States' President “confirmed the U.S. approach as rejecting the Kyoto Protocol” [Fletcher 2007: 112].

Theoretically, if at the beginning of George W. Bush's term the Democratic Party had majority in the Senate, there could be an entirely opposite situation in comparison to Bill Clinton. Clinton probably wanted the Kyoto Protocol to be ratified, but it was impossible due to Republican majority in the Senate. If the Democratic Party

had the majority at the time when Bush became President, it could be possible that he would not want to forward the Kyoto Protocol to the Senate because of the risk of ratification. In 2001 there was no majority in the Senate, so Bush in fact could take a risk of forwarding the Protocol for ratification, because there would be great possibility that the motion would fail.

The present United States' President Barack Obama represents the Democratic Party like Bill Clinton. He also presents more positive and flexible attitude towards a potential new climate change international agreement. But the current situation in comparison to the Clinton's second term looks alike. As the Republican Party has a majority again, Barack Obama cannot rely on Senate's support, what recent budget problem has shown. Therefore, the perspective for him to make the United States the party to the Kyoto Protocol or the party to the next agreement is unlikely, the situation will remain a stalemate and in regard to the United States' political system determinants it is possible that the US will never ratify such an agreement.

The Kyoto Protocol ratification process ended successfully in Australia. In this country the political scene consists mainly of two major parties: Australia Labour Party and the Liberal Party of Australia, the latter is usually alligning with the National Party of Australia. In regard to the Kyoto Protocol, it is important to mention that as long as the national-liberal coalition led by John Howard was in power the ratification of the Protocol could not happen, because of the attitude towards the Protocol presented by the Prime Minister and his government. At the same time Australia, ruled by John Howard, was performing actions to reduce its greenhouse emissions as it was a party to the Protocol. The country was also engaged in an agreement, which enabled technology transfer to the developing countries – Asia – Pacific Partnership on Clean Development and Climate

The main reason why Howard rejected the Kyoto Protocol was similar to one of the reasons of the adoption of the Byrd-Hagel Resolution in the United States: it was the matter of participation of developing countries, especially China and India. There could be and probably were also other, unofficial reasons. First of them were the friendly relations between John Howard and George W. Bush. The second, economic reason and also related to USA, were the bilateral negotiations held by both countries over the new free trade agreement, which enetered into force in 2004 [Brohé, Eyre, Howarth 2009: 199–201].

On the Australian political scene on the opposite side, also in regard to the Kyoto Protocol, was the Labour Party and its leader Kevin Rudd. In the years of 2006 and 2007 two events have even strenghtened his attitude. In 2006 the British government published the report prepared by Howard Stern, entitled *The Economics of Climate Change*³, in which Stern strongly advised taking part in actions like emissions trading – which is one of the Kyoto Protocol's flexibility mechanisms – and carbon taxes.

³ See: N. H. Stern (ed.) 2007. *The Economics of Climate Change*, Cambridge University Press, Cambridge.

One year later Stern visited Australia and presented the conclusions of his report to both Howard and Rudd. In November the same year Intergovernmental Panel on Climate Change published its *Fourth Assessment Report*.

In 2007 in Australia the parliamentary elections were to be held. In this regard Kevin Rudd called for a debate over the climate change policy. He underlined the meaning of the Stern Report and declared that the global warming issue would be one of the incoming campaign's "battlegrounds". The answer from the government was given by the Minister of Environment Malcolm Turnbull, who stated that ratification of the Kyoto Protocol would not make the country emit less greenhouse gases [Brohé, Eyre, Howarth 2009: 202–204]. In fact, the global warming indeed became one of the most important issues of the campaign.

In opinion of Arnaud Brohé, Nick Eyre and Nicholas Howarth [Brohé, Eyre, Howarth 2009: 205–206] there was also another important factor that had an influence over Australian public opinion. In 2006 Al Gore's *Inconvenient Truth* had its premiere, and one year later Gore was awarded the Nobel Peace Prize. Surveys have shown that the movie caused the change of attitude of the part of the Australian public opinion. It is not surprising because other public opinion surveys have shown that 74% of Australians did not support John Howard's climate policy and the level of distrust towards his ecological attitude was 77% [Pietraś 2011: 147]. In all these regards Kevin Rudd declared that if the Labour Party would win the elections, Australia would ratify the Kyoto Protocol [Rothwell, Kaye, Akhtavari, Davis 2011: 120]. The Labour Party indeed won the elections and the ratification of the Kyoto Protocol was the first official action of the newly-formed Australian government [Grubel; *Rudd takes...*].

THE IMPLEMENTATION LEVEL

The problems with implementation of the Kyoto Protocol in JUSSCANNZ countries in relation to internal political issues, especially conflicts between the ruling and main opposition party, were especially visible in regard to creation of national emissions trading systems. It happened in Australia and partially in New Zealand.

After 2007 parliamentary elections in Australia there were hopes that an emissions trading system will be soon established. That's because the Labour Party declared a will to reduce greenhouse gases emissions by 60% before 2050 and create the nationwide system, which could start its functioning before 2010. This system could be based on an already existing Greenhouse Gas Reduction Scheme (GGAS) created in 2003, which is applied to the New South Wales and the district region [Brohé, Eyre, Howarth 2009: 207–208].

The genesis of the Australian Emissions Trading Scheme was in the actions undertaken by the John Howard's government. As his party was to face the elections in 2007 and was under pressure from the public opinion, that was strongly supporting taking actions to protect the global climate, John Howard and his government decided

to establish a Task Group on Emissions Trading, which was composed of representatives from the government and business companies. In May 2007 the Task Group released its report with the recommendation of establishing the Emissions Trading Scheme, what Howard pledged to do by 2012. Also in 2007 his government prepared the *National Greenhouse and Energy Reporting Act*, which created a scheme, in which corporations were obliged to report on greenhouse gases emissions, energy production and consumption and also to report if they exceeded the specified greenhouse gases emissions [Zahar, Peel, Godden 2012: 157].

The 2007 elections, lost by Howard's party, opened Kevin Rudd the way to introduce his own policies. He decided to take part in the Garnaut Climate Change Review [Zahar, Peel, Godden 2012: 158], which was conducted by professor Ross Garnaut, authorized by Australia's Commonwealth, State and Territory Governments to prepare an independent study on the impacts that climate change can have on Australian economy [Garnaut...]. In the report published on 30 September 2008 Ross Garnaut "argued that an important aspect of being a party to an effective global agreement was the development of a domestic mitigation strategy with an ETS as its centrepiece" [Zahar, Peel, Godden 2012: 158].

In response to the report, on 16 July 2008 Kevin Rudd's government presented the Green Paper on the Australian ETS, which was then named Carbon Pollution Reduction Scheme (CPRS). In the next document, the White Paper, the basic rules of the CPRS were included. The White Paper was presented to Senate, but in August 2009 it was rejected with the votes of the Coalition, mainly composed of Liberal Party members. The Labour government responded by negotiating more compensations for industry. However after the change of leadership of the Coalition – new leader was Tony Abbot, known as an opponent of emissions trading scheme idea – the new proposed bill was rejected again in December 2009. Because of lowering of emissions reductions target and the abovementioned compensation for industrial sector, this time the Green Party Senators were also against [Zahar, Peel, Godden 2012: 159].

Julia Gillard from the Labour Party, who acted as Prime Minister while Kevin Rudd was overseas at the time the second voting took place even threatened Senate of using the double dissolution [Farr]. The double dissolution can be used when the Australian House of Representatives and the Senate can't reach an agreement in regard to a presented bill. According to Australian Electoral Commission, website is the following procedure:

- “1. The House passes a bill and sends it to the Senate.
2. The Senate rejects it, or fails to pass it, or passes it with amendments to which the House does not agree.
3. Three months must pass, from the time the Senate acts (or fails to act).
4. The House of Representatives passes the bill again (with or without Senate amendments).
5. The Senate again rejects the bill, or fails to pass it, or passes it with amendments to which the House does not agree.

6. The Prime Minister is able to approach the Governor-General to seek the dissolution of parliament.

7. Both Houses are dissolved by the Governor General in what is called a double dissolution and an election is held. The election is significant because it is the only occasion on which all the Senators face election at the same time.

8. Following the election the bill may again be introduced. The House of Representatives again passes the bill (with or without Senate amendments).

9. If the Senate again fails to pass the bill, or again passes it with amendments to which the House does not agree, the Governor-General can convene a joint sitting of the two Houses. This power also is exercised on government advice.

10. The joint sitting votes on the bill or bills, and on any disputed amendments. An absolute majority is required to pass the bill(s) – i.e. more than 50% of the total number of the members of both Houses.

11. If the bill(s) is/are passed, the Governor-General gives assent and the bill(s) become law” [*Double...*].

Despite these threats, the double dissolution procedure was not used. In 2010 the bill concerning the CPRS was presented again to the House of Representatives and was passed, but this time Kevin Rudd decided to postpone the next attempt to get support from the Senate. He did it because of “the lack of bipartisan support and the slow progress in international climate change negotiations”. In some opinions, it undermined his position as a leader and cost him the loss of leadership in the Labour Party to Julia Gillard [Zahar, Peel, Godden 2012: 160]. The next government, led by Julia Gillard, made no statements in regard to CPRS [*Carbon...*]. In the current political situation in Australia it seems that the CPRS is even further from being established, because in 2013 elections the Liberal-National Coalition achieved a crushing victory over the Labour Party [*Australia...*], led again by Kevin Rudd [*Labor...*], and the abovementioned Tony Abbott became the new Prime Minister.

In New Zealand the situation around the New Zealand Emissions Trading Scheme was quite the opposite in comparison to Australian one. The assumptions of the Scheme were made by the Labour Party, but in 2008 it lost the parliamentary elections. The National Party and its leader John Key were at first sceptical to the Scheme and its functioning was suspended. At that time, the preferred mechanism was the carbon tax, which was also supported by the libertarian ACT Party. John Key also decided to make a review of all climate policies. But soon the new Prime Minister declared that he would be pleased if the Scheme would be adopted in 2009 and it would be launched the next year [Brohé, Eyre, Howarth 2009: 244].

The abovementioned review had its genesis. After winning the elections over the Labour Party, the National Party had to form a coalition and needed the libertarian ACT New Zealand Party. The necessary agreement was prepared. According to this document, the National Party was required to make “amendments to the legislation that will balance [New Zealand’s] environmental responsibilities with (...) economic needs” [*National...*: 4]. It is important to notice that the “Climate Change” section

was the second one included in the “Policy Programme” part of the Agreement, just after “Law and Order”.

The climate change issue was so important because before the elections the ACT Party campaigned on “abolishing” the Emissions Trading Scheme [*National...*: 4]. ACT was even questioning the character of the global warming, which in the Party’s opinion was not anthropogenic, while the new Prime Minister John Key personally believed that “human-induced climate change was real” [Fleming]. In consequence, the National Party was forced to agree to perform a review of climate policies. Both Parties agreed to form a committee in the Parliament and the committee’s mandate would be to make a review of all legislation, amendments and alternatives to Emissions Trading Scheme in regard to economic circumstances and – what is important – to steps undertaken by “similar nations”. Moreover, the National Party had to agree to the delay of ETS launch until the review would be completed [*National...*: 4] and this delay had to be immediate. The recently imposed ban on new non-essential fossil fuel-based power generators had to be lifted as well [Fleming].

In Agreement there is a clear declaration that ACT is not completely against taking the responsibility for climate change policies, but in this Party’s opinion the creation of the ETS wasn’t “adequately justified”. ACT could support such a system, if there would be credible evidence that it would be beneficial for New Zealanders and if it would happen in conjunction with other countries important for New Zealand [*National...*: 4–5]. That could suggest the other JUSCANNZ/Umbrella Group countries.

The Report prepared by the aforementioned committee had several recommendations. First of all, it recommended that New Zealand should take immediate action on climate change to protect its international reputation. The base for formulation of policies should be the scientific evidence presented in the *Fourth Assessment Report*, but it is important to notice that ACT Party’s minority report added to the main report stated that the scientists haven’t proven “beyond reasonable doubt that future human-induced climate change is likely to be dangerous; that cutting greenhouse gas emissions is the best human response to this problem; and that an ETS is the most efficient way to reduce net emissions” [Trueman].

The Report itself didn’t refer directly to the Emissions Trading Scheme. With the clear position of the Act Party, the National Party needed another support for launching the ETS. The choice was the Maori Party. With its support the same year (2009) the ruling Party finished the review of the Emissions Trading Scheme [Smith]. The new *Climate Change Response (Moderated Emissions Trading) Amendment Act 2009* was finally agreed on 24th November 2009⁴.

⁴ Full text of the Act available at www.legislation.govt.nz/act/public/2009/0057/latest/096be8ed804cc27a.pdf.

THE “WITHDRAWAL” LEVEL

In 2012 one event was in the center of attention of the international community in regard to Kyoto Protocol. On 12 December Canadian Minister of Environment Peter Kent declared that Canada is withdrawing from the Kyoto Protocol. In Kent's opinion the Protocol didn't “represent a way forward for Canada” [*Canada...*]. His argumentation's nature was clearly economic. Peter Kent stated that further fulfilling the Canada's obligations would cost the country approximately 13.6 billion of United States dollars, what means that for every family it would be about 1,600 dollars every year. He also underlined the responsibility of the former government, stating that Canada's Kyoto Protocol ratification was a “legacy of an incompetent Liberal government”. Kent also questioned the importance of the Kyoto Protocol, because two countries responsible for most of the greenhouse gases emissions weren't obliged to make reductions. The United States weren't the party to the Protocol and the People's Republic of China didn't have any binding commitments. It must be noticed that in 2008 Canada declared already that the country was not willing to meet its emissions reductions commitments [*Canada...*].

To fully understand the “legacy of an incompetent Liberal Government” issue it is important to go back to the time when Canada ratified the Kyoto Protocol. The then Prime Minister Jean Chrétien represented the Liberal Party, while Peter Kent and Stephen Harper, the Prime Minister at the time of Canada's withdrawal (and the present Prime Minister), are the members of the Conservative Party. The background for the ratification of the Kyoto Protocol in Canada was quite similar to the situation around the Kyoto Protocol negotiation for Clinton administration. There is only one but very important difference: Canadian government did not need the support of the Canadian House of Commons to ratify the agreement (in comparison to Senate's position in the United States) and could do it on its own.

Like in the United States, in Canada the Kyoto Protocol opponents were also campaigning against the ratification of this international agreement. This was especially conducted by the business coalition. According to this coalition, the ratification could cost Canada about 40 billion dollars [*Canadian...*] and the loss of over 450, 000 jobs [Harrison 2010: 180]. Canadian Alberta province went even further than just campaigning, its authorities declared that if Chrétien's government would ratify the Kyoto Protocol, the government's right to do this would be questioned by them [McGraw 2006: 349]. The ratification was also opposed by the Canadian Alliance Party [Smith 2009: 214], which was formed to merge the conservative opposition to the Liberal Party in 2000 and was further consolidated under Stephen Harper's leadership. After 2003 merge with Joe Clark's Progressive Conservative Party, Harper became the leader of the newly-founded Conservative Party of Canada [*Canadian...*], which is now in power in this country.

As Bill Clinton had a problem to get the whole Senate – including Democratic Senators – on his side, Jean Chrétien had the same kind of problem with his Cabinet:

some of the members did not fully support the Kyoto Protocol. Another parallel is the private assurance given by Chrétien to the Cabinet members that there would be no declarations on Kyoto Protocol during the 2002 Conference on Environment and Development in Johannesburg. It was definitely surprising when the Prime Minister announced at this summit that by the end of the year he will present a resolution on the Kyoto Protocol ratification to the Parliament. The resolution was passed with the support given by the New Democratic Party and the Bloc Québécois [Harrison 2010: 180].

The most interesting fact is what did or rather what did not happen afterwards. The first official document in relation to climate change problem was the *Climate Change Plan for Canada*, published in 2002, which was a draft for the *Green Plan*, published on 13th April 2005. In Desiree McGraw's opinion [McGraw 2006: 350], the time distance between the publishing of these two documents was a result of lack of political will. As Kathryn Harrison wrote [Harrison 2010: 169], "the contrast between Canada's ratification of the Kyoto Protocol and its inaction with respect to compliance might suggest that ratification was a merely symbolic gesture". This lack of will was inexplicable in relation to high public opinion support for the ratification, which was at the level of 73% [Harrison 2010: 172–173].

Getting back to the withdrawal issue, in Stephen Harper's opinion about the Kyoto Protocol was that "this government has never favoured (...) the protocol that only controls a little bit of global emissions, not enough to actually make any difference but enough to transfer Canadian jobs overseas. And we will never agree to that" [Fitzpatrick]. In regard to further climate negotiations Harper declared that Canada was "working for the creation of an international protocol that will include all major emitters" [Fitzpatrick]. Harper and Kent's declaration met the criticism from the Canadian Green Party. Its leader Elizabeth May recalled that the Kyoto Implementation Act was passed by the House of Commons and she wondered if "the prime minister of this country thinks he can withdraw from an international treaty which was ratified by the House of Commons with no discussion in the House, and violate a domestic law with no discussion in the House" [Fitzpatrick].

Her view wasn't isolated. After Stephen Harper's declaration Daniel Turp, professor at University of Montreal, with the support of environmental groups filled an application in the Federal Court of Canada claiming that the withdrawal from the Kyoto Protocol was ineffective. His argument was similar to the one presented by Elizabeth May. In his opinion, as Olivier K. Jull [Jull: 2] from University of Calgary and University of Toronto writes about it, "by withdrawing from a treaty enacted by the Parliament, the Government exceeded its prerogative over foreign affairs, violated the separation of powers with the Parliament, acted arbitrarily (...) and contravened the democratic principle of Parliamentary consultation".

The application was addressed to the Minister of Justice, who is also the Attorney General. In his opinion, the decision of withdrawal from international treaty "is a matter falling within the royal prerogative and thus the executive branch of the

government” [Reasons...: 6–7]. Furthermore, the *Kyoto Protocol Implementation Act* passed by the Parliament didn’t remove the right to withdraw from the Kyoto Protocol from the executive. In regard to consultations, according to Attorney General this is an unwritten constitutional principle [Reasons...: 7], therefore it is not binding.

Both sides positions were brought by the Federal Court to the following questions:

1. Does the withdrawal from the Protocol violate the *Kyoto Protocol Implementation Act* and thus the rule of law?
2. Does the withdrawal from the Protocol violate the principle of separation of powers?
3. Does the withdrawal from the Protocol violate the democratic principle?

At the very beginning the Federal Court declared that it had no jurisdiction to make a declaration whether the withdrawal from the Protocol was of no force. On the first question the Court stated that “under the royal prerogative, the conduct of foreign affairs and international relations, including the decision to conclude or withdraw from a treaty, falls exclusively under the executive branch of government” [Reasons...: 8]. Daniel Turp argued on the base of one recent case that the *Kyoto Protocol Implementation Act* in fact did limit the royal prerogative, so the government couldn’t unilaterally withdraw from the Kyoto Protocol. The Court decided that indeed this could be that kind of situation, but it needed to be determined whether this was the adequate case.

The answer to the second question due to the Court was related to the first one, and if the government was not limited in its actions by the *Kyoto Protocol Implementation Act*, the principle of separation of powers was not violated and the applicant’s argument in this regard was rejected [Reasons...: 13]. In relation to the third question the Federal Court noticed the applicant side was on position that principle recently identified by the Supreme Court included “an obligation to encourage public discussion on all issues of public interest and consult the House of Commons as it is an essential element of (the) system of representative government” [Reasons...: 13] and therefore the withdrawal of the Protocol was illegal because of the lack of consultation. The argument was that the matter of ratification of the Kyoto Protocol led to a public discussion in the House of Commons and when the discussion ended, a motion on the ratification was passed, but in Federal Court’s opinion this motion was not binding for the executive, so it still had the unilateral power to ratify the Protocol. The motion from the House could not be an obligation for the government whether it could ratify the Kyoto Protocol or not. Summarizing, the Federal Court decided that “the application for judicial review of the government’s decision to withdraw from the Kyoto Protocol (was) dismissed without costs” [Reasons...: 14–15] and Canada’s withdrawal came into effect on 15th December 2012 [Status...].

SUMMARY

Umbrella Group countries encountered different problems on various stages of their functioning in relation to the Kyoto Protocol, those were: the negotiation of its text itself, ratification, implementation and even the possible withdrawal from the Protocol. These problems were mainly caused by difficult relationships between main political parties in regard to climate change policies. This issue even seems to polarize the political scene in these countries, where all major parties present a clarified position on global warming and the actions that should or shouldn't be undertaken and these positions clearly put these parties in opposition to each other. In regard to their positions, the detailed issues that were presented in this article are aggregated in the table below:

Issue	State	Main political parties positions		Final outcome
		Supporting	Opposing	
Negotiations and adoption	United States	Democratic Party, partial shift	Republican Party	The Kyoto Protocol signed, but with problems
Ratification	United States	Democratic Party	Republican Party	No ratification to this day
	Australia	Labor Party	National-Liberal Coalition	Ratification succeeded
Implementation (establishment of an emissions trading scheme)	Australia	Labor Party	National-Liberal Coalition	To this day, all attempts failed
	New Zealand	Labour Party	National Party — shift	NZ ETS was established
Staying in the Protocol	Canada	Liberal Party	Conservative Party	Withdrawal from the Kyoto Protocol

The conditions for the abovementioned outcomes were different in these countries. These conditions can be grouped in two categories. The first one is the situation in which the party which was currently in power simply had the majority. The second one is related rather to the construction of a political system in the country, especially including the relations between the legislative and the executive branch. The first situation had place in most of the presented cases, those are: the rejection of ratification of the Kyoto Protocol by the Bush administration, the successful ratification in Australia, the launch of New Zealand's Emissions Trading Scheme and Canada's withdrawal from the Kyoto Protocol.

The second group of conditions had place in the United States and in Australia. Bill Clinton probably would like to have the Kyoto Protocol ratified, but it was impossible

due to the construction of the United States political system in which international agreements signed by the President (or Vice-President, like in the case of the Kyoto Protocol) have to be ratified by the Senate. Therefore if the Senate is controlled by the opposition party to the President, the ratification is unlikely. Similiar situation had place in Australia in relation to attempts of establishing the emissions trading scheme, the Carbon Pollution Reduction Scheme. A bill has to be passed in the House of Representatives and the Senate. If – like in the United States – the Senate is controlled by the party opposing the Prime Minister, the bill has definitely lower chance of being accepted by this parliamentary chamber.

The analysis of presented cases makes possible to try and answer the question what is the attitude towards the Kyoto Protocol of the leftist/rightist parties in these Umbrella Group Countries? It is clear that parties with more leftist attitude like the Democratic Party, both Labor/Labour Parties in Australia and New Zealand and the Liberal Party in Canada are more likely to support the Kyoto Protocol and to undertake the actions related to this agreement. The parties on the right side of the political spectrum rather oppose these actions and the Protocol itself. The only exception was the National Party in New Zealand because it led to launch of New Zealand's Emissions Trading Scheme.

The reasons of the abovementioned attitudes are mainly related to the perception of responsibility. For the leftist parties, the responsibility to the international community seems to be more important than for the rightist parties. In the leftist parties' opinion all states are responsible for the common well-being and therefore they have to implement the international treaties like the Kyoto Protocol and that means the acceptance and implementation of the legally-binding commitments, including greenhouse gases emissions limitation and reduction. The leftist parties seem to be more proecological as well. According to the rightist parties, the government is mainly responsible for the economy and the well-being of the citizens. Therefore, the commitments that result from the Kyoto Protocol are considered by these parties as a threat to the state's economy and to the economic growth.

Trying to present the conclusions in regard to higher, international level it is important to say that the sceptical negotiating positions of the JUSCANNZ/Umbrella Group countries were not and are not caused only by these countries' general attitude, because the citizens in these countries in some cases even support the actions that can lead to protection of global climate. These countries' positions is a result of a political and party system-conditioned determinants that even sometimes force the executive – mostly responsible for conducting negotiations – to present other negotiating positions than it would like to present. Nevertheless – as it was shown – in all these countries there are strong parties opposing the Kyoto Protocol, which can win the elections and therefore create the country's foreign policy – including climate negotiations.

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BIOGRAPHY

Herbert Gnaś, Ph.D. of social sciences in the field of political science, gained his Ph.D. at the International Relations Department, Political Science Faculty, Maria Curie-Skłodowska University in Lublin. His dissertation, entitled (translation from Polish): *The Kyoto Protocol. The Analysis of the International Decision* was awarded first prize in the nationwide Robert Mroziewicz contest for the best Ph.D. dissertation in the field of international relations, international security and diplomacy. He organized and moderated panels at the First and Second nationwide Political Science Congress, panels were entitled (translation from Polish): “Interdisciplinarity in Ecological Security Studies” and “Climate Change Issues in International Relations”. Author of articles regarding climate negotiations and links between climate change and international security. E-mail: herbert.gnas@gmail.com.